REMARKS

Applicant thanks the Examiner for taking time to conduct a telephone interview on the pending final office action. The issues discussed during the telephone interview are included in the remarks below.

Claims 1-5, 7-10, 12-16, 18-26, 28-30 and 32 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. US2003/0040962 of Lewis. Lewis discloses a system for downloading games, movies, audio titles and other e-content as rentals or purchases. (Lewis, ¶ 0034). The method includes configuring a Audio/Video Processor Recorder-player and Data Management System (VPR/DMS) to connect to and receive the requested e-content either on-demand or via a broadcast schedule. *Id.* Payment is received for rentals and purchases before access is permitted. (Lewis, ¶ 0034, 0035, 0098, 0029, 0222). Lewis discloses that e-content usage may be monitored for copyright, patent or licensing purposes. (Lewis, ¶ 0260).

Applicant claims methods, computer program products and systems that include, *inter alia*, transmitting e-content to a computer for access by listening, viewing or combinations thereof, tracking the access to the e-content and charging a price determined as a predetermined function of the tracked access. (Claims 1, 12 and 22).

MPEP § 2131 provides:

> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

Applicant asserts that a *prima facie* case of anticipation has not been presented because each and every element as set forth in Appellant's claimed invention is not found in the cited prior art reference. Specifically, the cited prior art fails to charge the individual a price that is a predetermined function of the tracked access. Instead, as is common in the prior art, Lewis charges a

price for the downloaded e-content not based on access to the e-content by the user but merely by downloading the content as a purchased product, paid in advance, or renting the e-content on a time basis whether or not the content is accessed once, twice, ten times or not at all. Since Applicant claims access by viewing or listening or combinations thereof, tracking such access and then charging an amount equal to the access, a *prima facie* case of anticipation has not been presented because the cited prior art fails to set forth these claimed limitations.

Because the cited prior art fails to set forth Applicant's claimed limitations, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claims 1, 12 and 22 as well as all claims depending therefrom.

Applicant respectfully asserts that all claims are now in condition for allowance and respectfully requests the timely issuance of the Notice of Allowance. If the Examiner believes that a telephone interview would expedite the examination of this application, the Examiner is invited to telephone the below signed attorney at the convenience of the Examiner. In the event there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/IBM-0006 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,

STREETS & STEELE

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